

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP616

Cir. Ct. No. 2007CF3277

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANDREW CRAIG MOORE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Andrew Craig Moore, *pro se*, appeals an order denying his collateral postconviction challenge to a judgment convicting him of attempted robbery with threat of force, as a party to a crime, first-degree recklessly endangering safety and felon in possession of a firearm. Moore argues: (1) that

his trial lawyer ineffectively represented him by waiving his appearance during some of the circuit court hearings and by plotting against him; (2) that he should be allowed to withdraw his guilty plea because he was not aware that his trial lawyer had been threatened and lied to by the prosecutor during a hearing at which he was not present; and (3) that his appellate lawyer ineffectively represented him by filing a no-merit appeal rather than arguing on appeal that he received ineffective assistance of trial counsel.

¶2 WISCONSIN STAT. § 974.06(4) (2011-12)¹ provides that “[a]ll grounds for relief available to a person ... must be raised in his or her original, supplemental or amended motion” for postconviction relief. *See id.* A defendant who fails to raise all grounds for relief in the original, supplemental or amended motion for postconviction relief and direct appeal will be procedurally barred from raising the claims at a later date unless he or she provides a sufficient reason for not previously raising the issues. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157. When a defendant’s postconviction issues were addressed or could have been addressed by the no-merit procedure, the defendant may not raise the issues during a later proceeding without providing sufficient reason for not raising the issues in response to the no-merit report. *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574.

¶3 Moore’s current claims are procedurally barred by *Escalona-Naranjo* and its progeny. Moore was informed of his right to respond to his lawyer’s no-merit report, but he chose not to respond. Moore could have argued

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

in his response to the no-merit report that his appellate lawyer should have argued that Moore received ineffective assistance of trial counsel and that he should be allowed to withdraw his plea. Moore contends that he has a sufficient reason for failing to previously raise these arguments—the ineffective assistance of his appellate counsel. Moore’s appellate counsel’s purported omission does not provide a sufficient reason for Moore’s own failure to bring these issues to this court’s attention by responding to the no-merit report. As the supreme court explained in *Escalona-Naranjo*, “[w]e need finality in our litigation.” *Id.*, 185 Wis. 2d at 185. Because Moore has not provided a sufficient reason for failing to raise his arguments during his no-merit appeal, his claims are procedurally barred. *See id.*; *Tillman*, 281 Wis. 2d 157, ¶19.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

